Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KASTURI LAL

Appeal No. 1998-1281
Application 08/472,376

ON BRIEF

Before KIMLIN, JOHN D. SMITH and SPIEGEL, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4, 6-36 and 38-40, all the claims remaining in the present application. A copy of illustrative claim 1 is appended to this decision.

The examiner relies upon the following references as evidence of obviousness:

Small et al. (Small)	3,772,169	Nov. 13, 1973
Jokinen et al. (Jokinen)	4,783,274	Nov. 08, 1988

Lal 5,338,471 Aug. 16, 1994

The present application was copending with and was related to U.S. Serial No. 08/474,295, filed June 7, 1995. An appeal was taken to this Board in the related application and, in a decision dated May 26, 1999, the Board affirmed the examiner's rejection under 35 U.S.C. § 103 over references presently applied by the examiner. All the appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Lal in view of Small and Jokinen.

Under the heading GROUPING OF CLAIMS at page 3 of the brief, appellant asserts the patentability of claim 1 and states that "[s]ince claims 4, 6-36 and 38-40 depend or ultimately depend from claim 1, they likewise are patentable." Accordingly, since appellant has not presented separate arguments for any of the dependent claims on appeal, all the appealed claims stand or fall together with claim 1. In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). See also 37 CFR 1.192 c(7) and c(8).

We have carefully considered each of appellant's arguments for patentability. However, we are not persuaded by appellant that the examiner has committed reversible error in finally

rejecting the appealed claims. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

Appellant does not dispute the examiner's factual determination that Lal, the present inventor, discloses a composition comprising a major amount of the claimed triglyceride oil, a pour point depressant that is of the same nature as the claimed component, and a viscosity improver. In addition, appellant does not dispute the examiner's finding that Jokinen establishes that the index improvers disclosed by Lal and hydrogenated aliphatic conjugated diene/mono-vinyl aromatic random block copolymers, are art recognized equivalents, or that Small evidences the conventionality of utilizing hydrogenated random block copolymers of styrene and

butadiene in the lube oil compositions wherein "the copolymer contains 30-44 wt% of butadiene and 56-70 wt% of styrene and wherein hydrogenation removes at least 95% of the olefins unsaturation (See col. 2, lines 4-10)" (sentence bridging pages 3 and 4 of answer). Finally, appellant does not contest the reasoning underlying the examiner's legal conclusion that "[i]t would have been obvious to

one of ordinary skill in the art to have utilized the styrene-butadienes copolymers taught by Small in the composition of Lal because (1) Lal desires a viscosity index improver, (2) Jokinen teaches that those viscosity index improvers taught by Lal are art recognized equivalents of styrene-butadiene copolymers, and (3) Small teaches that the use of copolymers of this type are conventional in the lubricant art" (page 4 of answer, first paragraph).

It is appellant's contention that Jokinen does not disclose the high degree of monounsaturation of the claimed triglyceride oil, and that Small provides no teaching of employing vegetable oils instead of synthetic lubricating oils

or mineral lubricating oils. Appellant concludes that "[t]here is no teaching in Lal that could compensate for the previously enumerated deficiencies of Jokinen et al. and Small et al." (page 4 of brief, last full paragraph).

The fatal flaw in appellant's argument is that it fails to address the basis of the examiner's rejection. Appellant presents no argument in rebuttal to the examiner's rationale that it would have been obvious for one of ordinary skill in the art to employ a hydrogenated random block copolymer of styrene and

butadiene of the type disclosed by Small as a viscosity improver in the composition of Lal, i.e., appellant has not explained why one of ordinary skill in the art would not have considered it obvious to modify the composition of Lal in the manner proposed by the examiner. In essence, we find appellant's arguments to be non-responsive to the thrust of the examiner's rejection. We also note that appellant bases no arguments upon objective evidence of nonobviousness, such as unexpected results.

One final point remains. In the event of further

prosecu-tion of the subject matter at bar, such as by way of a continuing application, the examiner should also consider a rejection under § 103 over Jokinen in view of Small for the reasons articulated in the Board's decision in the related application referenced above.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)
Administrative Patent Judge)

JOHN D. SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CAROL A. SPIEGEL Administrative Patent Judge	)	

vsh

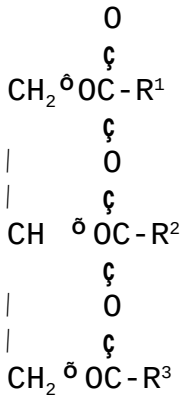
Appeal No. 1998-1281
Application No. 08/472,376

THE LUBRIZOL CORPORATION
PATENT DEPARTMENT
PATENT ADMINISTRATOR
29400 LAKELAND BOULEVARD
WICKLIFFE, OH 44092-2298

APPENDIX A

1. A composition, comprising;

(A) from about 95-98.8 parts by weight of at least one vegetable oil or synthetic triglyceride oil of the formula



wherein R^1, R^2 and R^3 are aliphatic groups that are at least 60 percent monounsaturated and contain from about 7 to about 23 carbon atoms, or a derivative thereof;

(B) from about 0.1-2.5 parts by weight of a hydrogenated block copolymer comprising a normal block copolymer or a random block copolymer, said normal block copolymer made from a vinyl substituted aromatic and an aliphatic conjugated diene, said normal block copolymer having from two to about five polymer blocks with at least one polymer block of said vinyl substituted aromatic and at least one polymer block of said aliphatic conjugated diene, said random block copolymer made from vinyl substituted aromatic and aliphatic conjugated diene monomers, the total amount of said vinyl substituted aromatic blocks in said block copolymer being in the range of from about 20 percent to about 70 percent by weight and the total amount of said diene blocks in said block copolymer being in the

range of from about 30 percent to about 80 percent by weight; the number average molecular weight of said normal block copolymer and said random block copolymer being in the range of about 5,000 to about 1,000,000; and

(C) from about 0.1-2.5 parts by weight at least one pour point depressant.